92-598

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE

UNITED STATES

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October Term, 1992

No. _____

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BRUCE CAMPBELL ADAMSON
Petitioner,

vs.

POSTMASTER GENERAL
MARVIN RUNYON, et.al.
Respondent.

---

# PETITION FOR WRIT OF CERTIORARI TO THE

# NINTH CIRCUIT COURT OF APPEALS,

# CENTRAL DISTRICT COURT OF CALIFORNIA

---

PLAINTIFF IN PROPRIA PERSONA
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## QUESTIONS PRESENTED

1. Did the District Court deny petitioner his right to due process and access to the courts. By refusing to appoint counsel for petitioner who acted as whistleblower in a reverse discrimination and retaliation case in which a postmaster hired, promoted, and transfers employees based on their being relatives of other employees and based upon their race; and committed mail fraud, nepotism, and entered into a conspiracy with the E.E.O. hearing representative because they wished to take reprisal against petitioner because of his E.E.O.C. activity, action of this sort which has caused the Postal Service as an employer an unprecedented amount of assaults by and upon their supervisors throughout the United States ?

2. Should Certiorari be granted by the Court under it supervisor of the lower federal courts where the Ninth Circuit Court of Appeals has allowed unprecedented "Intra-Circuit Conflicts", "Intra" means conflicts within their own Circuit, when the Ninth Circuit does not publish very few of the their opposite opinions; should petitioner have to suffer because the Ninth Circuit can not keep up with it's own opinions because of the nearly 3,300 Judical Circuit Panels; when petitioner has shown in his Reply-Brief an estimated 150 cases of intra-circuit conflicts?

3. Should the petitioner's case have been dismissed by the District Court, where the District Judge has dismissed every case he has ever heard against the United States Postal Service and has not appointed counsel in a single case?

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## INTRODUCTION

Petitioner, Bruce Campbell Adamson, requests that this Honorable Court grant this Petition for Writ of Certiorari, by which petitioner seeks review of the Memorandum filed by the Ninth Circuit Court of Appeals on May 29, 1992. See Appendix A.

## OPINIONS BELOW

On May 29,1992, in the Ninth Circuit Court of Appeals, Justices CHOY, SNEED, and SKOPIL Circuit Judges affirmed the lower courts opinion. See Appendix A.

Peitioner Bruce Campbell Adamson, sought for a Petition for Rehearing. which was timely, but denied by the Ninth Circuit of Appeals on June 11, 1992. See Appendix B.

Petitioner on April 28, 1989, the Ninth Circuit Court of Appeals Judges ALARCON AND NORRIS, denied appointment of Counsel, citing Bradshaw v. Zoological Society, 662 F. 2d 1301, 1318 (9th Cir. 1981). See Appendix C.

Petitioner on October 5,1990, filed a Petition for a Writ of Certiorari seeking Court Appointed Counsel to be Appointed. This Petition was denied on January 7, 1991.

On February 27,1990, United States Magistrate-Judge Ralph Geffen filed a Report and Recommendation.

On May 3,1990, Judge James Ideman filed an Order dismissing petitioner's Fourth Amended Complaint.

**JURISDICTION**

This Court has jurisdiction to decided this case under Statues 42 U.S.C.A. 2000e et. seq. Civil Rights Act of 1964; and Title VII 42 U.S.C. sec. 1981, 1983, 1985(3) et. al..

**CONSTITUTIONAL AND STATUTORY PROVISIONS AND REGULATIONS INVOLVED**

Petitioner relies upon the Fifth and First Amendments of the United States Constitution and Title 28 United States Code, section 1915 (d).

## STATEMENT OF THE CASE

Petitioner was a dedicated post employee and, having assisted the postal inspectors, on five occassions. Because Title VII reverse discrimination cases are so unpopular petitioner would like to discourage this court from assuming that petitioner is just simply a real live bigot.

Petitioner has spent seven years and completed a book on his fourth-great-grandfather, Judge Rufus Easton. Thomas Jefferson appointed Easton first postmaster of St. Louis while simultaneously appointing him judge of the largest territory ever in North America "The Louisiana Territory". Rufus Easton set free the first black slaves in the Louisiana Territory, "The Scipion's" in 1805, and granted them a Court Appointed Attorney when the slaves sued for their freedom. Easton trained Edward Bates in law in 1815, Bates would become

Abraham Lincoln's Attorney General. While Easton was the 2nd Attorney General for the State of Missouri a law was passed which permitted blacks to sue the U.S. for their freedom. In 1824, the Scipions initiated another suit, again a court appointed counsel was appointed. The Scipions won their suit in 1834-36. See article "Slave Freedom Suits Before Dred Scott; the Case of Marie Jean Scypion's Descendants," The Missouri Historcial Review, William E. Foley vol.79, no. 1, October 1984; or see Catiche Scypion and others v. St. Louis Circuit Court (1826), 1 Mo. 608; Marguerite Scypion v. Pierre Chouteau, Sr. (1834),3 Mo. 540; Minutes books of the Territorial Supreme Court, Pages, Missouri Historical Society; United States v. Francois Tayon, November 4, 1805, in ibid. United States v. Jacques Chauvin, October 30,1805, and United States, v. Madame Chevalier, October 30,

1805, in Missouri Minute Book of Territorial Supreme Court, Missouri Historical Society. Helene Chevalier v. Pierre Chouteau and Joseph Tayon, October Term 1806, and Pierre Chouteau v. Helene Chevalier, October term 1813, Missouri Supreme Court Records, Missouri State Archives, Jefferson City, Missouri, and Pierre Chouteau v. Helene Chevalier (1823) I, Mo. 343. Deposition of Marie Louise Chauvin, November 26, 1825, File 273, Jefferson County Circuit Court Records. Minutes books of the Territorial Supreme Court, pages 58-59, Missouri Historical Society.

During the civil war Easton's sons were close friends with Generals W.T. Sherman and U.S. Grant. Col. Alton Easton was Inspector General for the Missouri troops; while Brevet Brigadier General and Chief Quartermaster Langdon C. Easton was in charge of supplies on General Sherman's Cumberland march in

1864/65.

Petitioner believes that it is important to make these facts known for he has no intention of generating racial hatred between any race, and surely anyone can see that petitioner would not have spent seven years on a book which has been accepted into the New York Historical Society and five Missouri historical societies which expressed a view encouraging civil rights.

**REASONS WHY THE PETITION SHOULD BE GRANTED**

**A. THE DISTRICT COURT DENIED APPELLANT HIS CONSTIUTIONAL RIGHT OF ACCESS TO THE COURT AND HIS RIGHT TO DUE PROCESS BY DISMISSING HIS CIVIL DISCRIMINATION COMPLAINT. AFTER HAVING DENIED HIM COURT APPOINTED COUNSEL.**

Peitioner is arguing on how the law should be applied to the facts. If Certiorari is denied this issue of strong public interest and importance will never be cited in a court of law. Petitioner will be without a remedy and now is without a job and the same will again

happen to other innocent U.S. Postal Service employees. In Wards Cove Packing Company v. Frank Antonio, 490 US 642, 104 L Ed 2d 733, 734, 109 S. CT. 2112 (1989). Justice Blackmun stated : "I fully concur...Today a bare majority of the Court takes three major strides backwards in the battle against race discrimination. . . it requires practice-by practice statistical proof of causation, even where, as here, such proof would be impossible."

Petitioner, white male, first sought employment with the U.S. Post Service at the Santa Monica Post Office on November 11, 1983. He was denied employment as a male carrier because of one accident. Petitioner later learned that a black who had two car accidents and two license suspensions was hired because he was the son of a supervisor. Both lower courts have ignored the certified driving record for this

employee.

The Ninth Circuit failed to recognize petitioner's explanations in his Reply Brief. In their Memorandum Opinion attached as Appendix A the Ninth Circuit ignored the more important reasons on how he was discriminated against by the Santa Monica Post Office going back many years starting on November 11, 1983, and ending June 4, 1988, by the following actions of postal management a total time period of almost five years :

1. Ex-postmaster Willard failed to hire petitioner as a carrier when he was involved in one car accident, which was not his fault, and then hired a black employee, Romero Ross, the son of a non-bargaining employee Evelyn (Johnson) Ross, who had two driving accidents, two suspensions and delivered mail for two months with this suspended license.

2. Willard hired a black woman

Audrey Gillenwater in February 1985, when she failed the driving test and her name was forty names below petitioner's. Willard showed special consideration to Gillenwater by giving her a walk-out route not requiring a drivers license. On November 11, 1983, Willard refused to hire petitioner because of his driving record. Petitioner could have filled the walkout carrier position.

3. Willard who stated under oath (EEOC hearing November 12,1987), "We never use the clerk registers, when hiring clerks." Was a violation of Postmaster General, Wm. Bolger's Memorandum of Understanding, when he took in more than 40 black clerks from the Compton area through transfers without using the clerk registers to work at Santa Monica whose black population was less than 3%.

4. Willard when he hired his first cousin Horace Nathan Doby, who is

also Willard's wife's nephew, as a part-time-flex employee and petitioner as a casual employee in the month of November 1985.

5. Willard coerced petitioner to drop many EEO complaints by giving "Letters of Warnings," and removed them upon petitioner's withdrawing his EEO complaints.

6. Willard entered into a conspiracy with Patt Hutcherson, (a black woman), representative for the Postal Service when she failed to disclose that she was a close friend with ex-supervisor Hilette Hill and postmaster Willard; and she sat through the EEOC hearing on November 12, 1987, when petitioner had filed E.E.O.C. complaints against those two supervisors; violating Postal Employment Labor Relations Manual section 661. et. seq.

7. As a managing employee Mrs. Hutcherson had an obligation to dismiss

herself from the E.E.O.C. hearing on November 12,1987, instead of sitting through it; she made up postal regulations that never existed, by writing "The clerk registers were destroyed according to regulations, after five years." She committed mail fraud, conspiracy and entered into a conflict of interest. The Ninth Circuit did not dismiss other cases which could have shown a Conspiracy. French v. General Portland Inc. 885 F.2d 1393 (9th Cir. 1989). For in that case the Ninth Circuit stated "that the District Court "Abused it's discretion by not allowing evidence which could show conspiracy." This action conflicts with Chandler v. Johnson, (9th Cir. 1975), 10 FEP case at 689, 692; and conflicts with U.S. v.Jerri Oren, 893 F.2d 1057,____ (9th Cir. 1990).

8. By the post office because petitioner was unable to stand the harrassment in Northern California, which

had resulted in internal bleeding. petitioner has been removed from the Postal Service for blowing the whistle on postal officials effective August 13, 1990. On December 24, 1991, petitioner won a $38,000 award from the U.S. Department of Labor because he had proven harrassment by his supervisors.

Allegations that defendants engaged in course of conduct while Petitioner was in their employ that had the effect of harrassing him... subjecting him to ethnic, racial slurs... that the harrassment and dismissal of him were based upon plaintiff's national origin were sufficient to meet requirements of short and plain statement of claim showing that pleader was entitled to relief. Obradovich v. Federal Reserve Bank of New York, (D.C. N.Y. 1983), 569 F. Supp. 785. The reviewing court has an obligation to see that justice is done.

When someone does not have an attorney the court should liberally construe so that justice can be achieved. Hanson v. Hunt Oil Co., (8th Cir. 1968), 398 F.2 578; Guilday v. Depart. of Justice, (D.C. Del. 1978), 451 F. Supp. 717. A complaint should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts which would entitle to him to relief. Id. Complaint is to be liberally construed in favor of plaintiff and its material allegations taken as true. Fednav Ltd. v. Sterling Intern., (N.D. Cal. 1983), 572 F. Supp. 1268; Sanborn v. U.S., (E.D. Cal. 1978), 453 F. Supp. 651. That is not to say that petitioner's arguments are without merit.

Petitioner is a laymen and needed assistance in filing his complaints. At the time of his filing his Fourth Amended Complaint, petitioner's home was hit by 7.1 earthquake which ravaged the San

Cruz area. Petitioner was later force to lived out-doors for an entire month after this earthquake. He could only periodically worked on his Fourth Amendment of Complaint. United States Magistrate-Judge Geffen denied any reseaonable extensions.

Petitioner is not a lawyer, and he feels that the District Court abused its discretion in not liberally construing petitioner's case. This case is very complicated. It was very difficult for petitioner to prepare. Although it's not a perfect complaint by any means, petitioner has put forth evidence and charges which if proven would show discrimination, nepotism, mail fraud, conspiracy, and conflict of interest violations. These charges are more serious than petitioner's failure to make a "short and plain statement."

The Court did not dismiss a similar complaint. . . not published in

Fed. Supp. cited as W.L. 178, *3 (D.C.N.Y.); defendants, where directed to answer a responsive pleading within ten days. Seymore v. Reader's Digest Assoc., (S.D.N.Y. 1980), 493 F. Supp 257.

Although the court gave extensive instructions on how to file his amended complaint, these extensive instructions could not substitute for an attorney.

Retaliatory acts happened after petitioner filed the initial complaint. The retalitory acts became more serious as petitioner continued to file complaints. As resulting ultimately in petitioner's termination from the postal service on August 31, 1990.

"A second charge which leads to some procedural deficency will not then somehow take them out of the complaint." Brown v. Continental Can Co., (9th Cir. 1985), F.2d at 813. "A plaintiff who has otherwise properly exhausted her administrative remedies entitling her to

sue may include within her complaint events which have occurred after she filed her first administrative charge, even though those events have been subject of a subsequent unexhausted or untimely charge." Anderson v.Block, (8th Cir.1986),807 F.2d 145; Brown v.Continental Can Co., (9th Cir.1985), 765 F.2d 810.

**B. WHISTLEBLOWING**
**PETITIONER ALSO RELIES ON THE WHISTLEBLOWING ACT.**

Petitioner also relies on the "Whistleblowing Act." Petitioner succeeded in showing a Causal Connection as the Ninth Circuit stated in Gates v. Georgia Pacific Corp., (D. Ore. 1970), 326 F. Supp. 397,399, 2 FEP 978, 979 aff'd. (9th Cir. 1974), 492 F. 2d 292, 7 FEP 416 :

*"Since direct evidence of discrimination * * * * is virtually impossible to produce . . .in the ordinary case all the proof will be circumstantial. There are several types of circumstantial evidence commonly encountered which can support an*

*inference that retaliatory motive played some part in the adverse treatment of the employee."*

Public-sector employees have relied on First Amendment guarantees of free speech as a protection from retaliation for whistleblowing. In Brown v. Texas A & M University, 804 F. 2d 327 (5th Cir. 1986). Petitioner has acted as a whistleblower giving evidence of violations not for his own benefit but for the benefit of many other postal employees regardless of their race, minorities and non-minorities. On some occasions, public-sector employees have relied on First Amendment guarantees of free speech as a protection from retaliation for whistleblowing.

One crucial aspect in showing employer retaliation regards employer knowledge of the whistleblowing behavior. In Warren v. Depart. of Army, 804 F.2d 654 (Fed. Cir. 1986), the Federal Circuit Court of Appeals sustained a ruling by

the Merit Systems Protection Board. Before and after his transfer he had been involved in various whistleblowing activities. As in the case at bar, when the Merit Systems Protection Board upheld the termination, Warren appealed the decision. The court ruled that sufficient reason for discharge existed excluding retaliatory motive. The court stated : [. . . *The court indicated that "all the law requires is their [the decision makers'] reasonable separation from the whistleblowers direct line of fire, and from the counterblasts of those the whistleblower injuried.*"

Petitioner's First and Fifth Amendment rights should not have been ignored. The court did not dismiss Roth v. Veterans Admin. (9th Cir.1988), 856, F.2d 1401, 1406; Schwartzman v. Valenzuela, (9th Cir. 1988), 846 F.2d 1209; Eldridge v. Felec Servics Inc., (9th Cir. 1990), 920 F.2d 1434, 1441, 135

L.R.R.M. (BNA) 3202, 59 U.S.L.W. 2403, 117 Lab. Cas. P 10,429, 6 Indiv. Empl. Rts. Cas. (BNA) 32. Petitioner's remedy is through Civil Service Reform Act 28 U.S.C.A. sec. 1346(b), 2302(b)(8), 2674; Rivera v. U.S., (9th Cir.1991), 924 F.2d 948, 952-54; also under 5 U.S.C.A. sec. 2301-1305, 7512; see Dreher v. U.S. Postal Service, (1983), 711 F.2d 907. Chapter 71 of the CSRA gives federal employees "the right to form, join, or assist any labor organization". Rivera v. U.S., (9th Cir.1991), 924 F.2d 948, 952-54. These protections were strengthend by the "Whistleblower Act of 1989," Pub. L. No. 101-12, 103 Stat. 16.

The U.S. Attorney General can not cite one case in which counsel was appointed in a whistleblower case.

If Certiorari is denied and this case is dismissed, the Ninth Circuit will be in conflict with EEOC v. Crown Zellerbach Corp., 32 Fair Empl. Prac.

Cas. 809 (9th Cir. 1983), defines the parameters of an employer's lawful disciplinary action against employees who engage in protected "participation" or "opposition" conduct. In the case at bar petitioner has been denied the scope of statutory protected under Section 704(a) Conduct. Congress's concern, in both the "opposition" and "participation" clauses, was to protect the employee who dares to speak out against his or her employer's employment practices.

Ninth Circuit Court Judges ALARCON and NORRIS, denied counsel and cite Bradshaw v. Zoological Society, 662 F.2d 1301, 1318 (9th Cir.1981). See Appendix C.

Had the Judges read further in Bradshaw v. Zoological Society, 662 F.2d 1322, ftn 4, (9th Cir. 1981), they would of read :

"The majority makes much of an in propria persona litigant's inability to handle complex legal problems. I agree that the district judge should consider this in determining whether to appoint counsel. I observe, however, that Bradshaw has now successfully prosecuted two appeals in this court [Ninth Circuit] in her two attempts. Many attorneys have not fared as well"... See Appendix C.

Is it fair to compare petitioner with Nancy Bradshaw when petitioner lost every motion brought before District Court Judge Ideman, and has not won any of his cases in the District Courts? Is it fair for the Ninth Circuit to have used the Bradshaw standard for the past ten years when thousands have applied for court appointed attorneys?

This Honorable Court did denied petitioner's Petition for Certiorari which order was dated January 7,1991. Adamson vs. Frank, 111 S. Ct. 636.

However, in the same term October 1989 the Supreme Court did grant a Petition of Certiorari for a much less important case in Irwin v. Veterans

Administration et al., 498 US----, 112 L Ed 2d 435, 111 S. Ct (1990), to a petitioner and ruled against him because he failed to file his EEOC complaint within 30 Days. That case was much less complicated then the one at bar, on when petitioner asked the Supreme Court [... *"what guidelines...when should a court attorney be appointed for a whistleblower". . .?"]*

In conflict of the Ninth Circuit's and the Supreme Court's theory is an unpublished Ninth Circuit Case, Arnolie v. Depart. of Navy, (9th Cir. 1990), 900 F.2d 262, the District Court granted a Lawerence Arnolie, a black man, Court Appointed Counsel, when he also had an unfavorable ruling from the EEOC, and had filed his complaint after the thirty day rule. Petitioner's case was timely. See Boyd v. U.S. Postal Ser., (9th Cir.1985), 752 F.2d 410,414-15.

Petitioner's question would have

assisted those who filed within the 30 day time limit has he had already done by telling them when should a Court Appointed Attorney should be appointed. Discrimination is a subject which is continuously being repeated throughout the U.S. because of the complicated system in which to obtain justice from the court system.

Petitioner blew the whistle on Rufus Porter, Lincoln Willard, Raymond Aguillard and other black and non black supervisors, at Santa Monica Post Office and at Santa Cruz Post Office, and was removed by the latter effective August 13, 1990.

**C. CONFLICTS OF INTEREST**

The two persons in charge of all of the E.E.O. complaints for the Los Angeles area, (were black men) who also handle the case at bar. Petitioner had filed E.E.O. complaints against them 1.) Raymond Aguillard, Manager of

the Equal Employment Office of the Los Angeles Post Office and 2.) Rufus Porter, Manager of Labor Relations. They worked together through hundreds of E.E.O. complaints without disclosing that Aguillard had transferred real estate to Rufus Porter in 1981. Why didn't the lower courts find a "Conflict of Interest or recognize certified documentation of this fact?"

Avoiding the appearance of impropriety, in a conflict-of-interest theory, it is not only the reality of a conflict of interest, but also the appearance of one, that is considered undesirable. See Young v. U.S. ex. rel. Vuitton et Fils, 481 U.S. 787, 806 (1987). See Employee Relations Manual of the U.S. Post Office; Employee & Labor Relations Manual Sections 661.42,et. seq. "Conflict of Interest Employment", also 661.431,(a), (b), (c),and 661.435., for Remedial Action see

sections 661.821, 661.822 and 661.823.

The District Court did not consider this case when Willard hired Romero Ross who had two driving accidents, two suspensions and delivered mail for two months with a suspended drivers license. Petitioner first made application as a carrier on Nov. 11, 1983. Petitioner addressed this question in and out of his "Short and Plain Statement" on pages 3,4,6,7 of 4th Amendment of Complaint. The Ninth Circuit did not dismiss Pack v. Energy Research & Development Ad., 566 F.2d 1111, 1113, (9th Cir. 1977); Fed. R. Civ. P. 52(a); also Marotta v. Usery, Secretary of Labor, 629 F.2d 615, 616, (9th Cir. 1980).

Petitioner has shown in two other cases the Ninth Circuit rule in favor of the United States Postal Service because "*charges of abuse of discretion will be rejected, unless there is a strong*

*showing of abuse."* Lee v. Winton Blount, Postmaster General, (9th Cir. 1972), 345 F. Supp. 589 District Judge Sweigert ruled for the appellee's because unlike the case at bar, "*Plaintiff had failed to show that defendants acted arbitrarily or abused their discretion.* When a nephew of the San Francisco postmaster was denied a promotion.

In the case at bar, Willard hired the relatives of nine black employees; five were non-bargaining employees; he has hired two of his own 1st cousins who are his wife's nephews, then committed mail fraud by denying hiring his relatives, even though his cousins are were named after Willard's father, uncle and grandfather.

It is, however, necessary under section 1001 that "the false statement [] involve a matter within federal agency jurisdiction at the time it was made. The Ninth Circuit did not dismiss a complaint

when a violation of 18 U.S.C. sec. 1001, U.S. v. Green, 745 F.2d 1205, 1210 (9th Cir. 1985), they stated (emphasis) added, cert denied, 474 U.S. 925 (1985); U.S. v. Oren, 893 F.2d 1057,_____, (9th Cir. 1990). Another intra-circuit conflict.

The Court did not dismiss Reece v. U.S., 455 F. 2d 240 (9th Cir. 1972), because appellants could not show a strong abuse of their discretion. Petitioner has shown a strong abuse when ex-postmaster Willard hired so many relatives of only black employees. See McCollum v. U.S. Wm. Bolger, 794 F.2d 604,(11th Cir. 1986). See petitioner's Opening Brief before the Ninth Circuit brief pages 36 and 37.

The only way Willard could have hired 40 black clerks, was to violate the Postmaster General's Memorandum of Understanding when he did not "use the clerk registers ever". The Court did not dismiss Domingo vs. New England Fish Co.,

727 F.2d 1429 (9th Cir.1984).

The Court did not dismiss Gibson v. Local 40, Supercargoes & Checkers, (9th Cir. 1976) 543 F. 2d 1259,1261, 1262,1263, and 1268. No blacks were employed as casual clerks in Portland maritime area prior to Oct. 1967 and where blacks constituted 2 % of population in Portland metropolitan area and black males between ages of 18 and 64 constituted 5.2 % of population of city itself, prima facie case of racial discrimination in violation of Title VII of Civil Rights Act of 1964 prior to Oct. 1967 existed, and therefore the burden was shifted upon unions and employers to show nondiscriminatory reason for disparity. Civil Rights Act of 1964, sec. 703(h,j) as amended 42 U.S.C.A. sec. 2000e-(h,j.). An intra-circuit conflict.

Petitioner had successfully completed a supervisors course, on his own time and received a diploma from the

Postal Service, while eight other black employees were promoted by Willard to supervisors who had not taken this course. The Ninth Circuit Court did not dismiss a similar case in which they found for the Postmaster General. They did find "*that Limongelli was ineligible because he failed to take a supervision course.*" Limongelli v. Postmaster General, 707 F. 2d 370, 372, 373 (9th Cir. 1983). Cort v. Ash, 422 U.S. 66, 95 S. Ct 2080,2087, 45 L. Ed. 2d (1975), "announced general rules for deciding if a private right of action is implict in a statute".

Not only did petitioner have evidence showing retaliation, but had shown a prima facie case of discrimination based upon his qualification for promotion into the real estate division of the Postal Service although the complaint could of been phrased better.

Petitioner had completed three

years of college in real estate Program approved by the California Department of Real Estate and California Real Estate Association. Postmaster Willard kept petitoner from a position in the Real Estate Department of the Postal Service because petitioner had initiated E.E.O. complaints against him for race discrimination.

The Ninth Circuit did not dismiss a case Lynn v. Regents of California, 656 F. 2d 1337, 1344 (9th Cir.1981), "objective job qualifications are best considered as part of plaintiff's prima facie case, cert. denied, ----U.S. -----, 103 S. Ct. 53, 74 L. Ed. 2d 59 (1982). In Aikens v. Postal Service Bd. of Governors, 665 F. 2d, 1060, (D.C. Cir. 1982), that court vacated and remanded the judgment from the District Court.

Petitioner has an Associate Arts degree, and only three years experience as a Postal employee from November 1985

through November 1988. Aiken's a pro. se. plaintiff, had a masters degree and more than forty years in the Postal Service.

Petitioner gave evidence of several hundred EEO complaints. These are legitimate types of reprisal claims, pursuant to Section 704(a) of Title VII, 42 U.S. C. sec. 2000e-3(a). Most of those complaints were against the Santa Monica Postmaster for racial discrimination.

Petitioner's Fourth Amended Complaint showed a long history of retaliations against postal employees by the Santa Monica post office. See Exhibit 12-A through 12-C. of 4th Amendment of Complaint.

**D. INTRA-CIRCUIT CONFLICTS**

In conflict of the Ninth Circuit's and the Supreme Court's theory is an unpublished Ninth Circuit Case, Arnolie v. Depart. of Navy, (9th Cir. 1990), 900 F.2d 262, the District Court granted a

Lawerence Arnolie, a black man, Court Appointed Counsel, when he also had an unfavorable ruling from the EEOC, and had filed his complaint after the thirty day rule. Petitioner's case was timely. See Boyd v. U.S. Postal Ser., (9th Cir.1985), 752 F.2d 410,414-15. This is an important Intra-Circuit Conflict!

Conflicts among the circuits might be valuable because they reveal the consequences of taking a position rather than another, but the inability of a circuit to adhere to a single position obscures what those consequences are. Intra-circuit conflicts are also more likely to escape notice than inter-circuit conflicts. A panel opinion can be fairly frank about rejecting or interpreting narrowly and unsympathetically the decisions of another circuit. It is likely to be far more circumspect in its treatment of an earlier decision of another panel of the

same circuit, which would otherwise constitute binding authority.

Growth in the federal courts of appeals has been in only one direction in recent years: toward more cases and more cases of greater complexity.

The Average judge handles an annual work load of 255 cases. In the Ninth Circuit, however, each judge is inundated with an average of 467 cases per judge. () "Ninth Circuit Court of Appeals Reorganization Act of 1989," H.R. 101st Congress, 2nd session on S. 948, Serial No. J-101-62, page 148.

Unlike conflicts among the circuits, conflicts within the circuits deserve equal attention. They pose the greatest problem in the largest circuits, at least judging by commentary and criticism of the practices and opinions of the Ninth Circuit. For instance, a survey of district judges and lawyers reported that 40% of the judges and 31 %

of the attorneys disagreed with the statement, "Ninth Circuit opinions generally adhere to law announced in earlier opinions." And a majority of both groups, 68 % of the judges and 59 % of the attorneys, disagreed with the further statement, "There is consistency between panels considering the same issue." Survey evidence, preliminary though it may be, justifies further research into the extent of intra-circuit conflicts and possible ways of reducing their occurrence. Id. Re Act 89, 101 Cong. page 220-221; page 195.

The judiciary, as a body, has never been well equipped to focus on down-the-road problems because the judges who comprise it must attend to overwhelming day-to-day responsibilities that consume their time. (). Id. RE Act 89, 101st Congress page 166.

The fact is that over 45 % of the cases within the Ninth Circuit now come

from California alone. Id. Re Act 89, 101st Cong. 219.

In 1987, 52% more cases were filed in the courts of appeals than were filed in 1980, while the corresponding figure for the district courts is only 43 %. Id. p. 199. The Ninth Circuit is the largest circuit in the country by geography, number of judges, caseload, and population of almost 40 million. Conflicts regarding opinions within circuits pose the greatest problem in the largest circuits, according to the American Bar Association. () Id. pages 19-20.

There should be a study of the number and frequency of unresolved conflicts, coupled with an analysis of how many of them are truly "intolerable." We need to know how many "intolerable" conflicts our system is generating which are unlikely to be resolved by the Supreme Court. Id., page 163.

Danger of Conflicts Between Circuits vs. Conflicts within a Circuit : Conflicting interpretations of the law within a circuit may be more dangerous than conflicting legal interpretations between circuits. Conflicts within circuits, on the other hand, may simply go unnoticed, most especially when there are so many panel decisions. Therefore, a conflict between two circuits is readily apparent, and is beneficial to lead to a clear interpretation of the law by the Supreme Court. See "The U.S. Court of Appeals : Reexamining Structure and Process After a Century of Growth Report of the American Bar Association Standing Committee on Federal Judicial Improvements (ABA), page 26.

Like conflicts between the circuits, conflicts within the circuits can be resolved only by courts superior to the three-judge panels that normally decide federal appeals. For example, an

average circuit of 12 judges can be combined into 220 different three-judge panels. A modest increase of three judges, to a total of 15, increases the number of different panels to 455 and a further increase to 28, the number of judges on the Ninth Circuit, increases the number of panels to 3,276. Id. pages 219-20.

Supreme Court Rule 17.1 provides a nonexclusive list of reasons for which the Court may exercise its discretion to review a case on certorari, S. Ct. R.17.(1). "A conflict between the circuits."

**E. TORT CLAIMS**

Petitioner's tort claims have been ignored. For this the tort claims should also apply. Willard used his supervisors such as Fred Gonzalez, to injure petitioner. The Ninth Circuit did not dismiss Brown v. U.S. Postal Service, 860 F.2d. 884, (9th Cir. 1988).

## F. PROOF OF CLAIM

The District Court failed to consider that petitioner has shown (1) that he engaged in activity protected under Title VII, (2) that he was the subject of an adverse employment decision, and (3) that there was a causal connection between the protected activity and the adverse employment decision. Wrighten v. Memorial Hospital, (9th Cir. 1984) 726 F.2d 1346, 1354. The third element, the causal link, may be established by circumstantial evidence showing that the employer knew of the protected activity, and that the adverse employment consequence followed shortly thereafter. Jordan v. Clark, 847 F.2 1368 (9th Cir. 1988).

Petitioner has shown that the Postal Service has one of the worst records of any other employer for on the job harrassment. Not only in the Santa Monica Post Office! See Exhibit 12-A

through 12-C. of 4th Amendment of Complaint, see pages 45 through 50 of Opening Brief for hundreds of assaults and an estimated forty murders in the Postal Service between supervisors and employees.

The Ninth Circuit did not dismiss the following court cases in which they too had shown a "Causal Link" of retaliation in Kauffman v. Siderreal Corp., (9th Cir. 1982), 695 F.2d 342; Miller v. Fairchild Industries, (9th Cir. 1986), 797 F.2d 727; Willborn v. Escalderon, (9th Cir. 1986), 789 F. 2d 1328, 1331 ; Alexander v. City of Menlo Park,(9th Cir. 1986), 787 F.2d 1371 ; was and Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981).

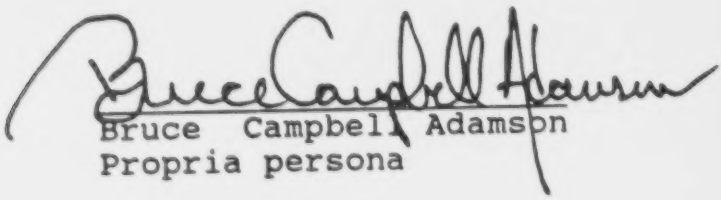
**C O N C L U S I O N**

For the foregoing reasons, petitioner requests that his District Court case not be dismiss, that he be granted a court appointed attorney to

assist him in handling this complicated discrimination case, and that the Memorandum of Opinion of the Ninth Circuit of the Court of Appeals be reverse.

Dated this 23rd day of September of the year nineteen-hundred and ninety-two (1992).

Respectfully submitted



Bruce Campbell Adamson
Propria persona

# APPENDIX A

NOT FOR PUBLICATION

F I L E D
MAY 29,1992
CATHY CATTERSON, CLERK
U.S. COURTS OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| BRUCE CAMPBELL ADAMSON, Plaintiff-Appellant, | No.90-55861 |
| v. | DC No.CV-88-6349-JMI |
| ANTHONY M. FRANK, Postmaster; MONICA LINCOLN WILLARD, FRANK MACDONALD, Defendants-Appellees | MEMORANDUM* |

Appeal from the United States District Court for the Central District of California James M. Ideman, District Judge, Presiding Submitted March 30, 1992**

Before: CHOY, SNEED, and SKOPIL, Circuit Judges.

*This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

**The panel finds this case appropriate for submission without argument pursuant

to 9th Cir. R. 34-4 and Fed. R. App. P. 34(a).

Appellant Adamson, proceeding pro se, has attempted to state a claim in the numerous complaints he has filed in alleging reverse sex and race discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. sec. 2000e et seq. Each time his complaint was dismissed for one reason or another. His third amended complaint, 48 pages long with 266 pages of attachments, was dismissed on the motion of the defendants for failure to provide a short and plain statement of the claims as required by Fed. R. Civ. P. (a). At that point the district court attempted to proceed on Adamson's second amended complaint, but, after reviewing it, concluded that it failed to state a claim under Title VII. It dismissed that complaint and

instructed Adamson to amend his complaint "to include facts constituting the elements" of a Title VII action.

Twice Adamson attempted to comply with this instruction. The first attempt consisted of a 58-page complaint with 324 exhibits. The second attempt, after the first was rejected for failure to comply with Fed. Civ. P. 8(a), consisted of a 35-page fourth amendment complaint. This was dismissed with prejudice for failure to state a claim pursuant to Fed. R. Civ. P. 12(b) (6). Adamson appealed this action. We affirm.

I.

DISMISSAL WAS NOT PREMATURE

The District court insturcted Adamson properly on both the substantive law of Title VII and the pleading requirements of an action thereunder. As indicated above, several opportunities were provided to enable Adamson to state

his claim. In no way can it be said that the district court erred in acting too hastily.

II.

FAILURES IN PLEADING A TITLE VII VIOLATION

Adamson failed to plead that he was more qualified than the person ultimately hired in the positions he asserts were discriminatorily denied him. He does plead that he was hired as a letter carrier in May, 1985, and was terminated in July of the same year "for leaving the jeep open and not pulling up the brake." In August he was rehired as a casual clerk. He was not reinstated as letter carrier, although two whites and one non-white under different circumstances were.

Adamson's bald allegations that he was passed over for promotions because he was white and that blacks were appointed to supervisory positions for which he was better qualified do not establish a prima

facie case of discrimination. Neither discriminatory treatment nor a disparate impact situation is adequately pleaded. To the extent that Adamson pleaded facts, such as his score on a certain test, the alleged nepotism practiced by Postmaster Willard, and the completion by him of a Post Office course in supervison, he fails to indicate how each caused or contributed to reverse discrimination against him. That Adamson has complaints about his work for the Post Office is clear; that his complaints do not state an employment discrimination claim under Title VII is also clear.

Adamson's sex discrimination and sexual harassment claims fare no better. That Postmaster Willard may have hired more black female clerks than of any other race and gender does not mean that Adamson, who was hired as a clerk, has a claim based on race or gender discrimination. Adamson must assert only

his rights when suing as an individual; he is not empowered to act as a private attorney general.

His claims of sexual harassment are supported only by a recital or altercations with fellow employees in which a female supervisor expressed herself forcefully and a mail coworker who addressed Adamson as "sweetheart." This does not constitute severe and pervasive harassment.

Finally, Adamson attempts to link his alleged harrassment to his filing of discrimination complaints with the EEOC. The effort fails. There exists on the face of the complaint no causal link. No other claims are adequately stated on the face of the complaint.

Adamson's failure is pervasive. Repeatedly he charged discrimination and repeatedly he alleged a fact of incident which was insufficiently related to discrimination or harrassment.

AFFIRMED.

# APPENDIX B

NOT FOR PUBLICATION

F I L E D
JUNE 11, 1992
CATHY CATTERSON, CLERK
U.S. COURTS OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

| | |
|---|---|
| BRUCE CAMPBELL ADAMSON, Plaintiff-Appellant, | No.90-55861 |
| v. | DC No.CV-88-6349-JMI |
| ANTHONY M. FRANK, Postmaster; MONICA LINCOLN WILLARD, FRANK MACDONALD, Defendants-Appellees | ORDER |

Before : CHOY, SNEED, and SKOPIL, Circuit Judges

Appellant's motion for an extension of time to file a petition for rehearing is hereby denied.

# APPENDIX C

F I L E D

UNITED STATES COURT OF APPEALS

APR 28,1989

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON
U.S. COURT OF APPEALS

| | |
|---|---|
| BRUCE CAMPBELL ADAMSON | No. 89-55142 |
| Plaintiff-Appellant, | DC# CV-88-6349-JMI |
| vs. | O R D E R |
| LINCOLN WILLARD, et al., | |
| Defendants-Appellees. | |

Before : ALARCON and NORRIS, Circuit Judges

Appellant's motion for appointment of counsel is denied. See Bradshaw v. Zoological Society, 662 F. 2d 1301, 1318 (9th Cir. 1981). Appellant's requests to waive the excerpt of record requirement and to amend designation of the record are granted. See Fed. R. App. P. 24 (c). Appellant's motion to file an oversized brief is denied. See Fed. R. App. P. 28.